

State of Colorado



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Meeting Minutes July 19, 2005

The State Personnel Board met in public session on Tuesday, July 19, 2005, at the Colorado Department of Transportation, 4201 East Arkansas, Second Floor Auditorium, Denver, Colorado 80222.

The meeting was called to order at approximately 10:45 a.m. Board members Diedra Garcia and John Zakhem were present in person, Elizabeth Salkind was present via teleconferencing, and Troy Eid was absent.

Kristin F. Rozansky, Board Director; Assistant Attorney General Pam Sanchez, Board Counsel; and Jane Sprague, General Professional III, were present in person.

I. REQUESTS FOR RESIDENCY WAIVERS

A. July 1, 2005 Report on Residency Waivers

Director Rozansky reported that there was one request for a residency waiver for which she will provide a report at the August meeting.

II. PENDING MATTERS

A. David Teigen v. Department of Corrections, State Personnel Board case number 2003B127.

Ms. Salkind moved to deny the Petition for Reconsideration of the Board's Decision in Light of Newly-Decided Court of Appeals Case. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

III. REVIEW OF INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR ON APPEAL TO THE STATE PERSONNEL BOARD

Director Rozansky recused herself from participation in the discussion of the first two cases. Ms. Sprague called the case numbers and the votes in lieu of the Director.

- A. Gilin Jones v. Department of Corrections, State Personnel Board case number 2003B082.

Ms. Garcia moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

- B. Betty Pinkerton v. Department of Transportation, State Personnel Board case number 2003B115.

Ms. Salkind moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

- C. John J. Deelman v. Department of Education, Colorado School for the Deaf and the Blind, State Personnel Board case number 2005B020.

Ms. Salkind moved to adopt the Dismissal Order and grant Respondent's Second Motion to Dismiss Appeal. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

- D. Iris Hawkins v. Department of Corrections, Youthful Offender System, State Personnel Board case number 2004B120.

Ms. Salkind moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

- E. Pam Cress v. Department of Human Services, Office of Performance Management, Employment Affairs Division, State Personnel Board case number 2005B011.

Ms. Garcia moved to adopt the findings of fact and conclusions of law in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

- F. Kristina Lanoue v. Department of Corrections, Limon Correctional Facility, State Personnel Board case number 2005B044.

Mr. Zakhem moved to deny Complainant's Motion for Contempt Citation based on lack of jurisdiction. Ms. Salkind seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

After Board discussion on the award of attorney fees, Ms. Salkind amended an earlier motion - to adopt the findings of fact in the Initial Decision of the Administrative Law Judge and to adopt the Initial Decision - to a motion to adopt the findings of fact in the Initial Decision of the Administrative Law Judge but to reverse the ALJ on Conclusion of Law No. 2 - "Complainant is entitled to an award of attorney fees and costs" - on the grounds that based upon the factual findings in this matter, attorney fees are not warranted. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

IV. REVIEW OF PRELIMINARY RECOMMENDATIONS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR TO GRANT OR DENY PETITIONS FOR HEARING

- A. Benjamin Vialpando v. Department of Transportation, State Personnel Board case number 2005G002.

Mr. Zakhem declared a conflict in this matter, leaving only two Board members eligible to consider the case and vote. Therefore, the matter was tabled until the next meeting. In addition, Board Counsel Sanchez advised the Board that a motion for oral argument had been filed by Complainant, Respondent was to be allowed time to respond to that motion, and her recommendation was that oral argument should be considered as discretionary, citing to Section 24-4-105(15)(a), C.R.S. It was determined that, if Board members' schedules could accommodate it, a special meeting would be called on August 2 or 3, 2005, to decide upon the motion for oral argument prior to the August 16, 2005 meeting. It was also determined that if the motion for oral argument were granted at the special meeting, oral argument would be heard and the Preliminary Recommendation of the Administrative Law Judge would be considered at the September 20, 2005 meeting. Ms. Salkind suggested that the Board discuss the ramifications of allowing oral argument.

- B. LaVonne Taylor v. Department of Education, Colorado School for the Deaf and Blind, State Personnel Board case number 2004G029.

Ms. Salkind moved to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing. Ms. Garcia seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Garcia, Ms. Salkind, and Mr. Zakhem.

V. INITIAL DECISIONS OR OTHER FINAL ORDERS OF THE ADMINISTRATIVE LAW JUDGES OR THE DIRECTOR

- A. Wynonna Mahaffey v. Department of Corrections, State Personnel Board case number 2005B053 (June 20, 2005).

Complainant, a parole officer who rose to the position of supervisor, appealed her demotion based on failure to appropriately manage those she supervised, and sought rescission of the disciplinary demotion, reinstatement to her former position, and attorney fees and costs. Affirming Respondent's actions, the ALJ found that Complainant was a topnotch parole officer, so successful in the position that she was moved up the chain of command, but despite Respondent's dedicated efforts to mentor Complainant as a manager, Complainant never adjusted to the Team Leader position. In fact, the demands of the position so overwhelmed her that she was on edge most of the time, unable to be calm, thoughtful, and unemotional in her supervisory role; instead, she often snapped at others because she was under so much stress, and the position was so challenging to Complainant that it impaired her judgment in managing her own case load. The ALJ ruled that the demotion was not arbitrary, capricious, or contrary to rule or law, and Complainant was not entitled to an award of attorney fees and costs.

- B. Monica Cowan v. Department of Human Services, State Personnel Board case number 2005B018 (June 27, 2005).

Complainant, an accounting technician, appealed her two-day disciplinary suspension, alleging that she was discriminated against on the basis of race, and sought reinstatement of the two days of suspension, reimbursement of lost wages, and an award of attorney fees and costs. After hearing, the ALJ concluded that as an overseer of timekeeping, Complainant failed to keep the timesheet spreadsheet updated on a daily basis and filed the timesheets she received without logging them into the spreadsheet on the computer. In addition, Respondent's discipline was not arbitrary and capricious, as the appointing authority imposed discipline upon Complainant after a thorough investigation, reviewed all documentation, and gave Complainant an opportunity to provide mitigating information. Finally, affirming the disciplinary suspension, the ALJ ruled that Respondent did not discriminate against Complainant on the basis of race and she is not entitled to an award of attorney fees and costs.

- C. Christopher Enriquez v. Department of Corrections, Arkansas Valley Correctional Facility, State Personnel Board case number 2005B068 (July 6, 2005).

Complainant, a correctional officer, appealed his disciplinary demotion, seeking reinstatement to the position of sergeant, back pay and benefits, and an award of attorney fees and costs. After hearing, the ALJ found that Complainant committed the acts for which he was disciplined, including violating the Staff Code of Conduct and regulations barring contraband in the facility and demonstrating a lack of judgment with respect to maintaining professional boundaries with inmates; the appointing authority's action was not arbitrary, capricious, or contrary to rule or law; and attorney fees are not warranted. The ALJ affirmed Respondent's action and dismissed Complainant's appeal.

VI. REVIEW OF THE MINUTES FROM THE JUNE 21, 2005 PUBLIC MEETING OF THE STATE PERSONNEL BOARD

Ms. Salkind moved to approve the minutes of the June 21, 2005 meeting as submitted. Mr. Zakhem seconded the motion. The motion passed on the affirmative vote of the following Board members: Ms. Salkind and Mr. Zakhem. Ms. Garcia abstained as she was not present at the June 21, 2005 meeting. The term of the third Board member who was present at the June 21, 2005 meeting (Linda Siderius) expired on June 30, 2005, and therefore, she was not present to approve the Minutes of the June 21, 2005 meeting.

VII. ACKNOWLEDGMENTS

DECISIONS OF THE STATE PERSONNEL BOARD MADE AT ITS JUNE 21, 2005 PUBLIC MEETING:

- A. David Teigen v. Department of Corrections, Colorado Territorial Correctional Facility, State Personnel Board case number 2003B127.

The Board voted to adopt the findings of fact and conclusions of law and to adopt the Initial Decision and make it an Order of the Board.

- B. Victor Pochon v. Department of Human Services, Colorado Mental Health Institute at Fort Logan, Nursing Service Administration, State Personnel Board case number 2005G064.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and deny the petition for hearing.

- C. Chanel Elaine Boyce-Dixon v. Department of Human Services, Colorado State Veterans Home at Fitzsimons, State Personnel Board case number 2005G055.

The Board voted to adopt the Preliminary Recommendation of the Administrative Law Judge and grant the petition for hearing.

VIII. REPORT OF THE STATE PERSONNEL DIRECTOR - Paul Farley, Deputy Executive Director of the Department of Personnel and Administration (DPA)

Mr. Farley addressed the Board on several matters, including the completion of the joint rulemaking for rules effective July 1, 2005, and public concern to what extent the new rules mirror Referendum A (Civil Service Reform), for example, temporary appointments. He also mentioned the release of the Total Compensation Survey on August 1, 2005, and the formation of an ALJ Review Commission with Bylaws to provide a performance review model similar to that of county, district, and appellate court judges in the state. Components of the review commission include the preparation of survey questions by the committee, self-evaluation, courtroom observation, and review of initial decisions. DPA welcomes the Board's participation in the Commission, which is composed of 9 members, including 5 judges, and chaired by Mike Williams, Director of the Office of Administrative Courts, a non-voting member, and if necessary, the bylaws could be "tweaked" to include the Board's judges.

Mr. Zakhem thanked Mr. Farley and invited him to come back to discuss total compensation with the Board. Regarding the Review Commission, Mr. Zakhem expressed that he believed it to be "a fantastic idea to improve performance," he endorsed the idea of tweaking the bylaws so that the Board gets reporting on the judges, and he would like to see the Board Director *ex officio*, alternating with Mike Williams as Chair, with the Board making some of the appointments to the Commission. Mr. Farley stated that they have contacted jurists already and asked if they would serve; there are also a few who are non-practicing attorneys on the commission. Ms. Salkind commented that there are a limited number of ALJs on the Board and the commission results would not be binding so that the Board could do whatever it wants with the survey responses, providing information for the Board.

Mr. Farley suggested that he can get together with Director Rozansky and Mike Williams to discuss what they agree upon and to address appointment of members, Director Rozansky's role in the commission, and other details. Ms. Salkind stated that she does not want undue pressure put on the Board's ALJs; Mr. Zakhem stated that the Director could work the details out with Mr. Farley and Mr. Williams.

IX. ADMINISTRATIVE MATTERS & COMMENTS

A. ADMINISTRATIVE MATTERS

- Budget Reports and Revenue and Expense Report - Director Rozansky will provide information on the budget when she is given access to the databases. Mr. Zakhem requested that financial information be provided to the Board when it is available.
- Cases on Appeal to the Board and to Appellate Courts
- Cases Scheduled for Preliminary Review
- Web Site Statistics - Ms. Garcia requested that these pages not be provided to the Board, as they are voluminous. Director Rozansky stated that she will consolidate the quarterly reports into a single page for perusal by the Board members.

Regarding the Agenda Summaries provided to the Board members in their packets, Ms. Salkind requested that the expanded summaries, originally requested by Mr. Eid, not be provided because they are too long. Ms. Garcia concurred, remarking that the Board members do not need a restatement of the briefs but it may be helpful to distill the summaries down into something more concise. It was determined that beginning in August, the case summaries will be abbreviated.

B. OTHER BOARD BUSINESS

- Board election - This was tabled until the August meeting when the full Board with the new Board member could vote on officers.
- Change of Board meeting location - The meetings will be held at 633 17th Street, Suite 1400, Courtroom 1, Denver, Colorado 80202-3604, beginning in August.
- Pam Sanchez, new General Counsel for the Board
- State Administrative Court Performance Commission

Board Counsel Sanchez stated that the Director should not voice her opinion on the cases; the members agreed that the case summaries should be more concise, stating issues and facts.

C. GENERAL COMMENTS FROM ATTORNEYS, EMPLOYEE ORGANIZATIONS, PERSONNEL ADMINISTRATORS, AND THE PUBLIC

X. EXECUTIVE SESSION

- A. Case Status Report
- B. Minutes of the June 21, 2005 Executive Session

The meeting adjourned by consensus.

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APPROVED THIS 16th DAY OF AUGUST, 2005.

John Zakhem, Chair

Diedra Garcia, Member

Elizabeth Salkind, Member